**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

**FIRST APPEAL NO. 910 OF 2003**

Framroze Apartment Pvt. Ltd. & anr. ... Appellants

V/s

Gammon India Ltd. ... Respondents

Shri U.J. Makhija with Amin Kherda for the appellants.
Shri Nilesh Pratap Singh for the respondents.

**CORAM: P.V. KAKADE, J.**

**DATED: 26TH OCT., 2004.**

**P.C.:**

1. Heard learned counsel for both parties. Perused the record.

2. Rule. Rule made returnable forthwith.

3. The present appeal is preferred against the order dated 20.11.1998 passed by the City Civil Court, Mumbai, decreeing the suit by virtue of provision of Order 8 Rule 5 and 10(2) of the C.P.C. in terms of prayer clauses (a) & (b) of the plaint without any order regarding costs.

4. It appears from the body of very short judgment passed by the lower Court that the defendants waived service of writ of summons after they were represented by an advocate in the interim proceeding. Therefore, under the order dated 11.7.1989 upon waiver of service the defendants were directed to file written statement. Thereafter, from time to time, the suit has been adjourned and defendants have been given opportunities on as many as a dozen occasions to file written statement. Suit had appeared for ex-parte decree since 20.11.1998 and even thereafter the suit was adjourned on number of occasions to give the defendants an opportunity to file their written statement, however, they failed to do so and hence the decree came to be passed under the said provision of the C.P.C.

5. Mr. Makhija, the learned counsel for the appellant submits that earlier the suit was dismissed and was restored without notice to them and that was the main reason why the written statement was not filed. However, in my considered view, as it appears from the order of the Trial Judge, several opportunities were given to the defendants to file written statement but they failed to do so. However, taking into account the

nature of the dispute involved in this suit, I am of the considered view that an opportunity should be given to the present appellants to have adjudication of the dispute on merits. Therefore, in the interest of justice, I propose to remand the matter to the lower Court with certain directions. Hence the following order :-

**O R D E R**

The appeal is allowed.

The order dated 20.11.1998 passed by the Trial Court is hereby set aside. The matter is remanded to the Court of City Civil, Mumbai, for trial.

The defendants shall file their written statement on 6.12.2004 before the lower Court and thereafter the Trial Judge shall take steps according to law so as to adjudicate the dispute on merits within six months thereafter.

The appellants-defendants shall pay costs of Rs.5000/-, out of which Rs.2,500/- shall be donated to the Kirtikar Library and remaining amount shall be paid to the

respondents within two weeks.

With these directions, the appeal stands disposed of with no order as to costs. Consequently, the C.A. also stands disposed of accordingly with no order as to costs.

C. c. expedited.

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